



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. S. v Minister of Employment and Social Development*, 2017 SSTGDIS 211

Tribunal File Number: GP-17-1418

BETWEEN:

F. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Connie Dyck

DATE OF DECISION: December 12, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a *Canada Pension Plan* (CPP) Survivor's Pension. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on May 30, 2017.

[2] This appeal involves whether a CPP Survivor's Pension is payable to the Appellant.

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Appellant made an application for a CPP Survivor's Pension on August 12, 2016. The contributor's date of birth was noted to be X, 1965 in Iran and his date of death was on July 14, 2016. The Appellant and the contributor were married on X, 1993. It was reported that the contributor worked in Iran. (GD 2-2 – GD 2-13)

[6] The contributor made valid contributions in 2011, 2012, 2013, 2014 and 2015. (GD 2-16)

SUBMISSIONS

[7] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations). The Appellant provided submissions which were received by the Tribunal on December 12, 2017.

[8] The Appellant submitted that:

- a) The amount of \$8,242.63 had been deducted from her husband's salary, so it had to be paid to his survivors; and

- b) If Canada does not have a social security agreement with Iran, and the CPP cannot use her husband's contribution from Iran to pay the CPP Survivor's Pension, then they have to pay the deducted amount as a lump sum to his survivors.

[9] The Respondent submitted that the contributor did not have sufficient contributions to the CPP and therefore a CPP Survivor's benefit is not payable.

ANALYSIS

[10] The Applicant for the CPP Survivor's pension has submitted that she is the wife of the contributor and therefore entitled to the benefit. The CPP legislation states that in order for a benefit to be payable, a contribution must have made at least the minimum amount of contributions required.

[11] In accordance with subsection 44(3), a contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions during the contributor's contributory period (a) for at least 1/3 of the total number of years included either wholly or partly within his contributory period, excluding from the calculation of that contributory period any month in a year after the year in which he reaches 65 years of age and for which his unadjusted pensionable earnings were equal to or less than his basic exemption for that year, but in no case for less than three years; or (b) for at least 10 years.

[12] In this case, the contributor's contributory period was 34 years from February 1983, the month after he turned 18 years of age to July 2016, the month in which he passed away. In accordance with subsection 44(3)(a), 1/3 of the 34 year contribution period would be 11 years and 3 months. Subsection 44(3)(b) states that a contributor must have a minimum of 10 years of contributions. The lesser amount 10 years is the amount of years that the contributor would be required to have in order to meet the requirements for this benefit.

[13] The evidence shows that the contributor had valid contributions in 2011, 2012, 2013, 2014 and 2015. The Tribunal finds that the contributor had valid contributions for only 5 years, and did not have sufficient contributors for a CPP Survivor's Pension to be payable.

[14] The Appellant has submitted that the contributory period should only begin when the contributor immigrated to Canada (when he was 43 years old). She also submitted that as a single parent, without receiving this benefit, she will be unable in financial hardship. The Tribunal looked to *MSD v. Kendall* (June 7, 2004), CP 21960 (PAB) which states that the Tribunal is not empowered to exercise any form of equitable power in respect of appeals before it. While the Tribunal is sympathetic to the Appellant's situation, the Tribunal cannot use the principles of equity or consider extenuating circumstances to allow the appeal.

[15] In written submissions in response to the Tribunal's intention to summarily dismiss the appeal, the Appellant further submitted if Canada did not have a social security agreement with Iran, which the Tribunal acknowledges that it does not, then the Appellant submitted the amount of \$8,242.63 which had been deducted from her husband's salary should be paid to her husband's survivors. However, the Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP. Further, the Tribunal does not have the jurisdiction to dictate to the Respondent to repay any contributions. The Tribunal only has the powers granted to it by its governing statute.

[16] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[17] The appeal is summarily dismissed.

Connie Dyck
Member, General Division - Income Security